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HUMAN RIGHTS COMMITTEE

Forty-first session

SUMMARY RECORD OF THE 1041st MEETING

Held at Headquarters, New York,
on Wednesday, 27 March 1991, at 10 a.m.

Chairman: Mr. POCAR

CONTENTS

Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

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The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Second periodic report of India (continued) (CCPR/C/37/Add.13)

1. At the invitation of the Chairman, Mr. Ramaswamy (India) took a place at the Committee table.

2. The CHAIRMAN invited the representative of India to answer questions held over from the previous meeting relating to section IV of the list of issues.

3. Mr. RAMASWAMY (India) said that before answering the specific questions which had been asked, he wished to make two important points of a general nature. With regard to article 4 of the Covenant, he recalled that when acceding to the Covenant, India had expressed the clear reservation that it did so only subject to the provisions of articles 22, 23 and 24 of its Constitution, which permitted preventive detention. That reservation was final and therefore not a subject for discussion at the present time. Secondly, article 6 did not provide for an absolute prohibition on the taking of human life, but only on the taking of life arbitrarily. In extreme circumstances, and in accordance with procedures defined by law, death could be caused.

4. The members of the Committee who had asked about the excessive use of force or misuse of powers by the police or the army had failed to give details on any specific incidents, and many of the allegations made had come to his attention for the very first time. Where individual violations of human rights had been brought to the Government's attention, it had taken action. The very active press and human rights organizations in India, and the practice of public interest litigation, together ensured that virtually no violation of human rights went ignored. Nor were there any territorial or geographical constraints on individuals rights, since any individual could go directly to the Supreme Court. He assured the members of the Committee that the various cases to which they had referred the previous day would be communicated to and investigated by his Government.

5. Where alleged violations of killings in particular areas were concerned, members should bear in mind that parts of India, notably the border areas, were suffering terrorist outrages, some of them carried out by terrorists who wore the uniforms of the security forces in order to discredit the latter. The list included attacks on trains, lootings, kidnappings, threats against members of the security forces and intimidation of their families aimed at forcing them to desert, attempts by various terrorist organizations to set up a parallel authority and the levying by such organizations of, in effect, parallel taxes. Against such a background of killing and torture and a deliberate campaign to discredit the security forces, the Government had a duty to protect the nation.

(Mr. Ramaswamy, India)

6. With regard to the questions concerning the provisions and precautions taken to prevent excessive use of force by the police or the army, specific enactments provided for action against such excesses and for punishment of the offenders. There had certainly been cases in which members of the police force had been brought to justice, either by the Government or by the courts.

7. With regard to the question of the use of firearms by army officers under the Armed Forces (Special Powers) Act, he drew attention to section 3 of that Act, which stipulated that armed forces could be used only if strictly necessary. Section 4 of the Act contained many restrictions, and indeed the powers under the Act were used only rarely.

8. He felt that the scope of the Armed Forces (Special Powers) Act had perhaps been misunderstood by some members of the Committee. Specifically, the Act applied, and permitted the use of arms only in a "disturbed area", which had to be declared as such by the Governor. Secondly, it did not apply to all army officers but only to those above a certain rank. Thirdly, it authorized the use of firearms by those officers only in cases of contravention of two specific types of law: either one forbidding the carrying of weapons or explosives or one prohibiting the assembly of five or more persons. Expressing the fear that that point, too, had been misunderstood the previous day, he stressed that the use of firearms was not authorized to break up any random assembly of five persons or more. Rather, it was authorized only when such an assembly had itself already been declared illegal under an order promulgated for a limited time by a magistrate.

9. Furthermore, section 7 of the Act did not give public servants total immunity. What it did was protect them from arbitrary prosecution in connection with the performance of their duties, but at the same time subjected that performance to scrutiny by the Government itself. If an officer had exceeded his powers, the Government would grant the right to prosecute that officer. If the Government were to refuse to do so, the courts could direct it to comply.

10. Turning to the questions on increasing numbers of cases of deaths in police custody and extrajudicial executions, he said he was unaware of any single case of extrajudicial execution. Latest statistics showed that 7,561 innocent civilians and police officers had been killed by terrorists, while around 2,000 terrorists had been killed (and 16,000 arrested). There had not, however, been any extrajudicial executions within the meaning of the question posed the previous day.

11. With regard to deaths in police custody, very strict rules of investigation were in place to examine any such occurrence. It was not true that the police could make secret arrests. If anyone was taken away by a policeman, the entire village would immediately be aware of it, and telegrams would be sent to the higher police authorities. Furthermore, as an experiment being carried out in southern India, legal aid lawyers were always on hand in police stations to assist those

(Mr. Ramaswamy, India)

arrested. In addition, no one could be held in custody for more than 24 hours without appearing before a magistrate. Should a death in police custody occur, an independent figure such as a magistrate would carry out an investigation and make a preliminary report. He felt that the question was not justified, inasmuch as deaths in police custody were not in fact on the rise.

12. Turning to the questions posed under section IV (d) of the list of issues on the rules and regulations governing the use of firearms by the police and security forces, he explained that that issue was governed by various laws, including the Police Act, enactments based on such laws, and instructions based on the enactments, which were themselves set down in great detail in police manuals. There were specific regulations on the use of firearms to disperse unlawful assemblies and also strict rules governing the use of the army to assist a civil power such as the police. The army could be called on only by an official of the level of a district judge, and only in exceptional circumstances. Possession of firearms, including by the police force, was strictly controlled. The question had been asked whether there had been violations of those laws and regulations, but he was not aware of any cases in which a policeman had been prosecuted for excessive use of firearms. As a general rule, it could be said that the police force in India was a law-abiding one.

Treatment of prisoners and other detainees (articles 7, 8 and 10 of the Covenant) (section V of the list of issues)

13. The CHAIRMAN read out section V of the list of issues concerning the second periodic report of India, namely: (a) detailed information regarding procedures for receiving complaints under the Bonded Labour System (Abolition) Act, 1976; (b) consideration to updating the Prisons Act, 1899; (c) controls to ensure that persons arrested or detained are not subjected to torture or to cruel, inhuman or degrading treatment; (d) machinery for carrying out an independent and impartial investigation into allegations of torture and of summary, arbitrary and extrajudicial executions, and independent investigations, if any, and their results; (e) information on arrangements for the supervision of places of detention and on procedures for receiving and investigating complaints; (f) compliance with the United Nations Standard Minimum Rules for the Treatment of Prisoners and accessibility of relevant regulations and directives to prisoners; (g) information on the scientific classification of prisoners with a view to preventing exposure to criminals during custody (para. 65 of the report); and (h) information on detention in institutions other than prisons and for reasons other than crimes (e.g. in psychiatric institutions).

14. Mr. RAMASWAMY (India) said that the Bonded Labour System (Abolition) Act was intended to put an end to the exploitation of certain sections of the population. Precisely because bonded labourers were among the weakest and poorest members of society, the Act avoided any complex, technical procedures for receiving complaints and instead made the states responsible for ascertaining whether bonded labour existed within their jurisdictions. The Act authorized the state Governments to

(Mr. Ramaswamy, India)

confer such powers on a District Magistrate as were necessary for the Act to be properly enforced, and in turn enabled the District Magistrate to instruct an officer to take the necessary steps for this purpose. The Act also provided that if the District Magistrate became aware, either through his own investigation or through complaints, of a bonded labour system within his jurisdiction he had a duty to take such immediate action as might be necessary to eradicate it. "Vigilance committees" were established pursuant to section 13 of the Act for the purpose, inter alia, of advising the District Magistrate, providing for the economic and social rehabilitation of freed bonded labourers, and ensuring them adequate credit. If appropriate, a vigilance committee would also defend a suit against a freed bonded labourer.

15. With regard to the questions about prisons and prison management, he drew attention to the information in paragraphs 65 and 66 of the report and further explained that the management of prisons was a responsibility of the states under the Constitution, regulated by various acts and carried out in accordance with the rules deriving from them, which in turn were incorporated in the prison manuals of the various states and Union Territories.

16. Since India's initial report had been submitted, the All-India Committee on Jail Reforms had submitted its report and made certain recommendations on prison administration. Most of the recommendations had been implemented by the states and the Union Territories and those that had not were still under review. The All-India Committee had also recommended the appropriation of funds for the improvement of conditions for certain categories of prisoner, amenities such as water supply and sanitary facilities, training of prison staff, and vocational programmes to assist in the rehabilitation of prisoners. One of the recommendations of the All-India Committee had been that Parliament should enact new uniform and comprehensive legislation for the entire country and steps towards that end were being taken.

17. The state Governments had also been advised to appoint a Board of Visitors in each district, to visit all police lock-ups and ensure that prisoners under trial were lodged in separate facilities from those used for convicted inmates, as was already required by law.

18. With regard to section V (h) of the list of issues, he said that the Mental Health Act of 1987 (Act 14 of 1987) had replaced the outmoded Indian Lunacy Act of 1912. The Mental Health Act stated that no stigma should be attached to mentally ill persons and asserted that mental illness was curable. The Act provided for the treatment of the mentally ill and also protected citizens from being detained in the psychiatric hospitals or nursing homes without sufficient cause. The Act prescribed conditions for the licensing and control of psychiatric hospitals and nursing homes and provided for legal aid to the mentally ill at the expense of the State, in appropriate cases.

Liberty and security of the person (article 9 of the Covenant) (section VI of the list of issues)

19. The CHAIRMAN read out section VI of the list of issues concerning the second periodic report of India, namely: (a) the maximum length of detention for persons who remain in custody pending trial; and (b) legal, administrative or other safeguards against involuntary disappearances of persons, and cases of involuntary disappearances where the remedy of habeas corpus or other effective remedies have been successfully applied.

20. Mr. RAMASWAMY (India), referring to section VI (a), said that a police officer could not detain an accused person arrested without a warrant for more than 24 hours. If a police officer considered it necessary to detain an accused person for a longer period for the purpose of investigation, he could do so only after obtaining a special order from the Judicial Magistrate under section 167 of the Code of Criminal Procedure of 1973. The Judicial Magistrate could authorize the detention of the accused person in police custody for a period not exceeding 15 days. If the Judicial Magistrate was satisfied that, for the purpose of investigation, the accused person should be detained for a period longer than 15 days, he could authorize further detention. In such cases the accused would be detained in custody other than that of the police, and the total period of detention would not exceed 90 days when the investigation involved an offence punishable by death, life imprisonment or imprisonment for a period of not less than 10 years, and 60 days when the investigation related to any other offence.

21. The right to a speedy trial was guaranteed under article 21 of the Constitution. In 1986, the Full Bench of a High Court had ruled that an inordinately prolonged and callous delay of 10 years or more, due entirely to the prosecution's default in the context of the reversal of a clear aquittal on a capital charge, would be prejudicial per se to the accused, and the accused would be entitled to unconditional release.

22. With regard to section VI (b) of the list of issues, India had no system for collecting data on the number of cases in which habeas corpus had been effectively used. Habeas corpus was an effective remedy in cases involving disappearances. The Supreme Court had held that recourse to third-degree methods by police officers resulting in the death of a person in police custody was a serious offence which was aggravated by the fact that it was committed by a person who was supposed to protect citizens and not abuse authority. The punishment for such offences should be sufficiently severe so as to deter others from indulging in such behaviour.

23. The Supreme Court had affirmed beyond any doubt the State's responsibility for tortious acts committed by its employees in the course of their employment. Thus, in the case of police atrocities, the State had to pay compensation. In a recent case, the Supreme Court had ruled that state Government was obliged to pay 75,000 rupees to the mother of a nine-year-old child who had died as a result of beating and assault by a police officer.

Right to a fair trial (article 14) (section VII of the list of issues)

24. The CHAIRMAN read out section VII of the list of issues concerning the second periodic report of India, namely: (a) With reference to the cost of litigation and the delays involved in the judicial process, referred to in paragraph 80 of the report, information on progress, if any, toward finding workable and equitable solutions; and (b) information on resort to the free legal aid and advisory scheme under the Legal Services Authority Act, 1987, since the enactment of the legislation?

25. Mr. RAMASWAMY (India) said that a new forum with significant jurisdiction had been established to deal with disputes concerning public employment. Article 323A of the Constitution provided for adjudication, by administrative tribunals, of disputes relating to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of Union and state Governments. Under that authority, the Parliament had passed the Administrative Tribunals Act of 1985. Pursuant to that Act, the Union Government had set up the Central Administrative Tribunal in 1985 in order to provide speedy and inexpensive justice to central government employees in respect of service-related issues. The Central Administrative Tribunal had regular branches in the states. Section 4 (2) of the Act provided for the establishment of state administrative tribunals by the Union Government when a state Government made a specific request to that effect. Such administrative tribunals had jurisdiction and enjoyed the powers and authority of all courts - except those of the Supreme Court - with respect to service matters. As at January 1990, a total of 51,894 cases had been disposed of.

26. With regard to section VII (b), he said that, until recently, the lok adalats had been informal agencies and were overseen by state legal aid and advice boards. They were experimental alternative or informal systems for settling disputes and usually employed conciliatory methods. By the beginning of 1990, 3,129 lok adalats had been held. About a dozen lok adalats had been organized for cases pending before High Courts and, in 1989, a lok adalat had been set up for cases pending in the Supreme Court.

27. In the light of that experience, the parliament had passed the Legal Services Authorities Act (Act 39 of 1987). The purpose of the Act was to implement article 39A of the Constitution, which provided that the State would secure that the operation of the legal system promoted justice, on a basis of equal opportunity, and would, in particular, provide free legal aid to ensure that opportunities for securing justice were not denied to any citizen by reason of economic or other disabilities. The Act provided for legal aid on a statutory basis as well as for the establishment of legal service authorities at central, state and district levels. Those authorities would have their own funds received in the form of grants from the central Government and state Governments. Under the Legal Services Authorities Act, the lok adalats had acquired statutory authority, and every award of lok adalat was considered to be a decree of a civil court or an order of any other court or tribunal and was final and binding on all parties to the dispute.

(Mr. Ramaswamy, India)

28. India also had a very successful legal aid movement in which judges, voluntary organizations and lawyers of repute took part. It might soon be the case that every lawyer in India would have an opportunity to spend part of his time serving in the legal aid movement.

Freedom of movement and expulsion of aliens (articles 12 and 13) (section VIII of the list of issues)

29. The CHAIRMAN read out section VIII of the list of issues concerning the second periodic report of India, namely: (a) information on legal provisions governing the expulsion of aliens and whether an appeal against an expulsion order has suspension effects; and (b) information on the success to date of the Government's strategy aimed at promoting the safe return of refugees to their countries of origin.

30. Mr. RAMASWAMY (India) said that section 3 of the Foreigners Act of 1946 specifically governed matters concerning the movement of foreigners in India. Under article 14 of the Constitution, a foreigner in India had the right of recourse to judicial process in the event of a violation of his rights. The courts were free to order any appropriate remedies, including interim orders with suspension effect.

31. With regard to the freedom of movement of aliens, the Supreme Court had recently ruled that the preventive detention of a foreign national who was not a resident of the country involved an element of international law and human rights. When an act of preventive detention involved a foreign national, it was a generally recognized principle in the Indian legal system that, in cases of doubt, the national rule was to be interpreted in accordance with the State's international obligations. The fundamental rights guaranteed in the Indian Constitution were in conformity with the rights guaranteed in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, to which India was a party.

32. In relation to section VIII (b) of the list of issues, the Government of India had provided the necessary cooperation for the amicable resolution of the refugee problem. Once the refugees' countries of origin established conditions conducive to the safe return of refugees to their homes, India facilitated their return. An agreement reached between India and Sri Lanka on 29 July 1987 had resulted in the repatriation of more than 25,000 Indian and Sri Lankan refugees over a period of 15 months without any untoward incident. The movement of refugees had been entirely voluntary, and the interests of those who had chosen not to be repatriated had been safeguarded.

Right to privacy (article 17 of the Covenant) (section IX of the list of issues)

33. The CHAIRMAN read out section IX of the list of issues concerning the second periodic report of India, namely: (a) information concerning the law and practice relating to permissible interference with the right to privacy; and (b) information on legislation concerning the collection and safeguarding of personal data.

34. Mr. RAMASWAMY (India) said that India had no single omnibus law on privacy as such. The right to privacy was governed by the Constitution and by the relevant civil and criminal laws. For example, trespass and defamation could be offences under the Indian Penal Code or they could be civil law offences and torts. In general, it was not easy for the authorities to interfere with the privacy of individuals.

35. With regard to section IX (b), data concerning personal information could be collected in India under the Census Act of 1948 and the Registration of Births and Deaths Act of 1969. Census officers were authorized to collect information on the basis of a schedule. The data collected from individuals included name, age, sex, marital status, language, mother tongue, religion, ability to read and write and educational level, economic status, scheduled caste or scheduled tribe, place of birth, resident or immigrant status, and children. The information collected was confidential, and only a statistical abstract of the total information collected was published. The collected information was currently being computerized. Persons or institutions requesting data for research purposes would have access only to group data. The Registration of Births and Deaths Act was similarly administered and was overseen by the Registrar General of India. Given the level of illiteracy in India, it could not be said that such data were complete.

Freedom of religion and expression; prohibition of propaganda for war and incitement to national, racial or religious hatred (articles 18, 19 and 20 of the Covenant) (section X of the list of issues)

36. The CHAIRMAN read out section X of the list of issues concerning the second periodic report of India, namely: (a) details on any laws and regulations governing the recognition of religions or religious sects by public authorities; and (b) controls on the freedom of the press and mass media in accordance with the law.

37. Mr. RAMASWAMY (India) said that India was a secular democratic republic consisting of several communities with different religions and religious faiths and beliefs. While there was no specific law or regulation governing recognition of religions or religious sects by public authorities, the Constitution of India and other relevant laws protected the religious rights of all persons.

38. The Religious Institutions (Prevention of Misuse) Act of 1988 (Act 41 of 1988) sought to prevent the misuse of religious institutions for political and other purposes.

39. Article 25 of the Constitution specified that the generic term "Hindu" was to be construed as covering persons professing the Sikh, Jain or Buddhist religions.

40. With regard to section X (b), freedom of the press and the mass media were covered under article 19 (1) of the Constitution. Those freedoms were subject to reasonable restrictions. The Press Council of India, a body constituted under the Press Council Act of 1978, was responsible for preserving the freedom of the press and maintaining and improving the standards of newspapers and news agencies in

(Mr. Ramaswamy, India)

India. Thus, in so far as the members of the Press Council were involved in the press and newspaper publishing, any restrictions on the freedom of the press could be said to be self-imposed.

41. Films and the cinema were governed by the Cinematograph Act of 1952. Under section 4 of that Act, any person desiring to exhibit a film must apply to the Board for permission. After viewing the film, the Board might sanction the film for unrestricted public exhibition or for public exhibition restricted to adults, or it might request the applicant to edit the film as the Board deemed necessary before it approved the film for public exhibition, or it could refuse to approve the film for public exhibition.

42. Under the Cinematograph Act, a film would not be certified if it was against the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or involved defamation or contempt of court or was likely to incite the commission of an offence. A film would not be certified if it or any part of it presented an erroneous, distorted or misleading image of the social, cultural or political institutions of India.

43. The Press and Registration of Books Act of 1967 applied to the publication of books. The Office of the Registrar of Books established under that Act was responsible for enforcing the provisions of the Act.

44. In 1990, the parliament had passed the Prasar Bharati (Broadcasting Corporation of India) Act. That Act sought to place the mass media, such as television, in the corporate sector, taking it away from full government control. The Prasar Bharati Board would be responsible for the supervision, direction and management of the affairs of the Broadcasting Corporation of India.

Freedom of assembly and association (articles 21 and 22 of the Covenant) (section XI of the list of issues)

45. The CHAIRMAN read out section XI of the list of issues concerning the second periodic report of India, namely: information about the number, membership, organization and effectiveness of trade unions in India.

46. Mr. RAMASWAMY (India) said that trade unions were very active and effective in India. In 1984, the membership of Central Trade Union Organizations included more than 10,000 unions. The current membership of trade unions was approximately 10.25 million. Among workers, knowledge of trade union law was very high, which often made it possible for labour to settle its disputes without recourse to external legal aid.

Protection of the family and children (articles 23 and 24 of the Covenant) (sections XII of the list of issues)

47. The CHAIRMAN read out section XII of the list of issues concerning the second periodic report of India, namely: (a) the main features of the Commission of Sati

(Prevention) Act, 1987, and whether there had been any reported cases of sati since the passage of that Act or any prosecutions thereunder; (b) statistics to show the number of "dowry deaths" before and after enactment of the Dowry Prohibition (Amendment) Act, 1986, and the inclusion of the new offence and definition of "dowry death" in the Indian Penal Code; (c) the effectiveness to date of the Dowry Prohibition (Amendment) Act, 1986, and of the amendments to the Penal Code, Code of Criminal Procedure and other legislation relating to arranged marriage, child marriage and divorce; (d) information on the law and practice relating to the employment of minors; and (e) illustrations of the activities undertaken by the child welfare boards established pursuant to the Children Act, 1960.

48. Mr. RAMASWAMY (India) said that the Commission of Sati (Prevention) Act provided for the prevention of the commission of sati and made glorification of it, through any ceremony, procession or function, an offence. The offence of attempting to commit sati was liable to the same punishment as the offence of attempting to commit suicide under section 309 of the Indian Penal Code. District Magistrates had been given the power to prohibit the performance of any act leading to the commission of sati in any area where they were of the opinion that it was likely to be committed, and the Act provided for special courts to be constituted to try sati-related offences speedily and expeditiously. Responsibility for implementing the provisions of the Act lay with the state Government and Union Territory Administrations. No case of commission of sati had been reported since the passage of the Act.

49. With respect to section XII (b) and (c) of the list of issues, he explained that the Dowry Prohibition Act, 1961, had first been amended in 1984 to make the offence cognizable, bailable and non-compoundable, and following representations by voluntary organizations the Dowry Prohibition (Amendment) Act, 1984, had been further amended, along with amendments to the Indian Penal Code, the Code of Criminal Procedure and the Indian Evidence Act, to place the burden of proving that there had been no demand for dowry on the person who took or abetted the taking of dowry. An offence committed under the amended Act had been made non-bailable, and the Criminal Law (Second Amendment) Act, 1983, had also been amended to deal effectively not only with cases of dowry death but also with cruelty to married women.

50. A section had been added to the Indian Penal Code with a view to providing protection to women and discouraging atrocities and cruelty against them; it stipulated that anyone who subjected a woman to cruelty - whether the husband or a relative of the husband - should be punishable by imprisonment of up to three years and be liable to a fine. Under the new section, harassment of a woman with a view to coercing her, or any person related to her, to meet an unlawful demand for property or valuable security, or on account of failure by her or by any person related to her to meet such a demand, would amount to cruelty. Section 4 of the Dowry Prohibition Act, 1961, provided for punishment merely for the demand of dowry, and the new section of the Indian Penal Code - section 498-A - did not amount to double jeopardy.

(Mr. Ramaswamy, India)

51. The other major amendment in the Dowry Prohibition (Amendment) Act, 1986, had been the insertion of a section - section 304-B of the Indian Penal Code - providing for punishment by imprisonment for from seven years to life of anyone found guilty of committing dowry death, defined as causing the death of a woman by burns, bodily injury, or in other than normal circumstances, within seven years of her marriage when it is shown that soon before her death she had been subjected to cruelty or harassment by her husband, or any relative of her husband, for or in connection with any demand for dowry. The Dowry Prohibition (Amendment) Act, 1986, had come into force on 19 November 1986, and responsibility for its implementation lay with state Governments and Union Territory Administrations.

52. His Government was aware that in spite of the law prohibiting child marriages the practice had continued in some parts of the country. It was deeply entrenched in certain sections of Indian society, and the Government had taken steps to educate the people about its consequences through the mass media, group discussions with rural women and the involvement of voluntary organizations. The provisions of the Child Marriage Restraint Act, 1929, amended in 1978, were sufficiently stringent, and no review of them was contemplated. His Government was seriously concerned about offences against women and it was felt that they were not merely a problem of law enforcement; they were also indicative of the disabilities and inequalities from which women suffered despite constitutional provisions for their equality, social justice and protection. The problem needed to be considered in a broader social framework, for increasing emphasis on women's emancipation without corresponding changes in social attitudes and institutions sometimes led to women being subjected to hostility and aggression. Improvement of the status of women could be brought about only through their full integration and participation in national development. The Indian Department of Women and Child Development operated a scheme that would assist organizations working to improve the status of women in preventing atrocities against them through education, publicity and research.

53. Turning to section XII (d) of the list of issues, he said that the Child Labour (Prohibition and Regulation) Act, 1986, prohibited the employment of children under the age of 14 in certain hazardous occupations and processes, and provided for the regulation of their conditions of work in all other jobs. Other labour legislation, such as the Factories Act, 1948, the Mines Act, 1952, and the Plantation Labour Act, 1951, specified the minimum age of employment and contained regulations concerning working conditions. The Government had a national policy on child labour to rehabilitate children withdrawn from prohibited employment and to provide education, health care and other services for working children.

54. Referring to section XII (e) of the list of issues, he said that India gave high priority to children's development. A National Children's Board planned and co-ordinated all essential services for children, and similar bodies had been established in all the states and Union Territories. There was also a National Children's Fund, a Special Nutrition Programme, Integrated Child Development Services, and programmes concerned with early childhood education and the provision of creches. The Children Act, 1960, which had provided for the establishment of child welfare boards to deal with neglected children, children's homes, special

(Mr. Ramaswamy, India)

schools, observation homes and after-care organizations, had been replaced by the Juvenile Justice Act, 1986, which provided for the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles and for the adjudication of certain matters relating to delinquent juveniles and disposition thereof. The Act's emphasis was not on keeping a child in jail but on dealing with juveniles in an atmosphere different from that of the courts. Cases were to be brought before Juvenile Welfare Boards speedily, and while an inquiry was proceeding the juvenile, unless he was staying with his parents or a guardian, was to be sent to an observation home or place of safety. The Government was implementing a centrally sponsored scheme to assist in establishing and improving observation homes, juvenile homes and special homes, and to provide training activities.

Rights of persons belonging to minorities (article 27 of the Covenant) (section XIII of the list of issues)

55. The CHAIRMAN read out section XIII of the list of issues concerning the second periodic report of India, namely: (a) clarification of the statement in paragraph 134 of the report that the reference to "ethnic" minority did not apply to Indian society; (b) special factors or difficulties in the effective enjoyment by minorities of their rights under the Covenant; and (c) additional information on the work and functions of the Minorities Commission and its effectiveness.

56. Mr. RAMASWAMY (India) said that although there were religious and linguistic minorities in India, the Indian people formed a composite whole racially, and hence the concept of ethnic minorities and ethnic majority did not apply.

57. With regard to section XIII (b) of the list of issues, he said that all human and fundamental rights and mechanisms for redress were equally available to minorities, which, further, enjoyed a specific Constitutional right to establish and administer educational institutions, so there were no special factors or difficulties in the effective enjoyment of human rights by minorities in India.

58. Turning to section XIII (c), he said that a Minorities Commission had been set up in 1978 to safeguard the interests of minorities, whether based on religion or on language, and to maintain a constant vigil and review implementation of constitutional safeguards to different groups of minorities. The Commission had a Chairman and its members belonged to different minority communities. A Special Officer for Linguistic Minorities had been appointed under article 350B of the Indian Constitution to investigate all matters relating to safeguards provided for linguistic minorities. In 1983, the Government had established a Minorities Cell in accordance with a 15-point programme enunciated by the Prime Minister, administered by the Ministry of Welfare and implemented through state Governments and Union Territory Administrations as well as through central departments and ministries. The Minorities Cell ensured fuller participation by minorities in all aspects of national life, coordination and monitoring of implementation of the 15-point programme and expeditious action on minority grievances. Some states and Union Territories had also set up minority cells. The 15-point programme was aimed at preventing communal violence, promoting communal harmony, giving particular

(Mr. Ramaswamy, India)

emphasis to the educational needs of minorities, giving the minorities special consideration in recruitment to services such as the state and central police forces, and ensuring that they received a fair and adequate share of benefits from development programmes.

59. Mr. WENNERGREN said that he had found nothing in the Indian Constitution, the initial report of India or its second periodic report about any measures that had been employed to give effect to the right set out in article 7 of the Covenant that no one should be subjected without his free consent to medical or scientific experimentation. There was also no mention in the Indian Constitution of the right to freedom of expression including freedom to seek, receive and impart information, as set out in article 19 of the Covenant. He would welcome some indication as to the degree of access to official information enjoyed by the general public and the media in India, especially in view of difficulties experienced by journalists in visiting Kashmir and in covering the predicament of the Naga people.

60. Mr. RAMASWAMY (India) agreed that there was no specific legislation in his country to the effect that a person should not be subjected to compulsory medical or scientific experimentation, but it was implied in article 21 of the Indian Constitution, which guaranteed liberty and life, and article 19, which guaranteed the right to move freely throughout the territory of India. Both articles had been interpreted by the courts to include the right to privacy and the right against trespass. The right to information was an integral part of freedom of expression, which freedom was guaranteed to all citizens under article 19 of the Constitution. All citizens in India had the right of access under the law to knowledge of all public documents other than official secrets. He regretted that he was not in a position to confirm or deny the allegation regarding media access to Kashmir, but he would obtain that information from his Government and communicate it to the Committee in due course.

61. Mrs. HIGGINS said that, while there were provisions in Indian law, notably in article 22 of the Indian Constitution, relating to the security of the person, which would in principle satisfy the requirements of article 9 of the Covenant, she was concerned over the fact that those guarantees had in certain areas been suspended as a result of special legislation and that they were in any event frequently ignored in practice despite excellent instruction from the Supreme Court. While the State party contended in paragraph 57 of the report that the Terrorist and Disruptive Activities (Prevention) Act, 1987, did not violate article 9 of the Covenant because it did not authorize the deprivation of liberty on grounds or in accordance with procedures other than those established by law, she felt obliged to point out that the existence of domestic legislation in itself did not necessarily guarantee compliance with the Covenant.

62. Under section 8 (2) of the National Security Act, 1980, there was no need to disclose the grounds of detention, and detention had to be reviewed by an advisory board within seven weeks from 10 days after the arrest; those periods were considerably longer than would be compatible with article 9 (4) of the Covenant. Under the Terrorist and Disruptive Activities (Prevention) Act, 1987, there was one-year detention for investigation of rather broadly defined offences in

circumstances in which bail was difficult to obtain. There was no provision under the National Security Act, 1980, requiring a person to be brought forward promptly. She noted in that connection that the United Kingdom had deemed it necessary to enter a derogation because of its concern that a seven-day gap before bringing persons to a judicial or other authority might not be compatible with the Covenant; substantially longer periods were involved in the case of India.

63. It was worrying that the Terrorist and Disruptive Activities (Prevention) Act, 1987, was being applied even in states where the Government was not facing armed opposition. State Governments had recently announced that the Act would be used against criminal groups, and in Gujerat more than 2,000 people had been detained under its provisions between its entry into force in 1986 and 1990.

64. Finally, she asked why section 3 of the Indian Constitution's 44th Amendment Act, which had obtained Parliamentary and Presidential approval in 1978, had still not been brought into force, and why it had been necessary to control access by the media to Kashmir, one of the areas affected by the legislation in question, if it was felt that that legislation was operating satisfactorily.

65. Mr. RAMASWAMY (India) replied that the Terrorist and Disruptive Activities (Prevention) Act was only a procedural enactment, not a law dealing with preventive detention or creating a new offence. Article 3 of the Act enumerated the specific disruptive activities that would be subject to punishment. One could not have an ordinary criminal court deal with cases of terrorism because of problems such as intimidation of witnesses. Provided the court procedure was properly announced and the bail conditions were appropriate, there was nothing in the Terrorist and Disruptive Activities (Prevention) Act, according to India's understanding of constitutional law and fairness, that violated article 9 of the Covenant. Article 9 dealt essentially with two points: liberty and security of person, and access to the courts. India had a legitimate concern to preserve its territorial integrity and could take steps to do so. In any case, the constitutionality of the Act had been challenged and was currently being reviewed by the Supreme Court.

66. He did not accept Mrs. Higgins' contention that access to the media was totally controlled. For security reasons, there might be some justifiable press restrictions, but he was unable at the moment to provide any details.

67. Ms. CHANET observed that the Terrorist and Disruptive Activities (Prevention) Act was a penal law that defined offences and determined procedure, and as such came under article 14 of the Covenant, to which India had entered no reservation. She asked how article 9 (1) of the Act, stating that the central Government or a state Government could, by notification in the Official Gazette, constitute one or more designated courts for a given area or case, was compatible with article 14 (1) of the Covenant, requiring that tribunals should be established by law. Furthermore, article 14 (1) of the Covenant established the publicity principle as the norm when it stipulated that hearings should be public except in special circumstances; whereas article 16 (1) of the Act established the secrecy principle as the norm when it stipulated that all proceedings should be conducted in camera

(Ms. Chanet)

except where an application was made for open hearings. Under article 16 of the Act, moreover, the identity of witnesses and the place where proceedings were to be held could be kept secret and none of the judgements were to be published. How could that be reconciled with the Covenant?

68. Mr. RAMASWAMY (India) observed that the import of article 14 of the Covenant was that all were entitled to a fair and public hearing, but it was quite a different matter to say that there had to be a single criminal procedure for all offences. In actuality, the designated courts established under the Terrorist and Disruptive Activities (Prevention) Act were perhaps the most impartial of all Indian courts because the judges appointed were officials with special experience, independence and fearlessness; and an unusual provision was made for appeal, on the facts and the law, directly to the Supreme Court. Article 136 of the Constitution normally required special leave, not often granted, for such direct appeal to the Supreme Court. Consequently, his Government had enacted legislation consonant with article 14 of the Covenant to provide a fair trial for the very serious offence of terrorism.

69. As to the public nature of the hearings, article 14 itself provided for specific exceptions. Secrecy was very important for the witnesses in terrorism cases and article 16 of the Act aimed primarily at protection, both of witnesses and of investigating officers, and sought to strike a balance between the requirements of publicity and of safety.

70. Mr. LALLAH, referring to the rights of the family and to equality between the sexes, emphasized that they were safeguarded not only by the provisions concerning equality in marriage under articles 23 and 24 of the Covenant, but also under articles 3, 2(1) and 26 of the Covenant, to which India had entered no reservations.

71. The concept of freedom of religion was not generally interpreted in India as sanctioning any derogation from basic rights. The practice of sati, sanctioned by religion but a gross violation of article 6 of the Covenant, was a case in point; and he was glad that the Indian Government had taken legislative action to prohibit sati.

72. It was his understanding that India had a plethora of family laws, although the Committee had been given no details. He asked the representative of India in his capacity as his country's Attorney General to give thought to ensuring that none of the rights in religious marriages should violate other fundamental human rights, including the fundamental right of equality before the law. That might affect Hindu personal law or Muslim personal law, under which polygamy was tolerated, or the laws allowing different treatment of the sexes as to the causes for divorce. He had been heartened to read in article 44 of the Indian Constitution that the promulgation of a uniform civil code for the people of India was contemplated at some future time, depending on political will.

73. Mr. RAMASWAMY (India) said that he agreed wholeheartedly that articles 2, 3, 23, 24 and 26 of the Covenant were relevant to the rights of the family and

(Mr. Ramaswamy, India)

equality between the sexes. As he had said earlier, India's difficulty in reaching the goal of equality was more a social than a law enforcement problem. With regard to marriage, much progress had been made via legislation. The Constitution sought to strike a balance between the right to practise religion and the rights of the family. Once freedom of religion and conscience had been guaranteed for minorities, it became a political problem to develop an all-India civil code. The members of parliament, being mostly of one religion, had enacted majority legislation by amending the Hindu Marriage Act. Muslim marital law still needed to be amended, with regard, for instance, to alimony. One of his own dreams was a uniform civil code for the country.

74. Mr. SADI noted that Amnesty International, a respected international organization, had recently published a detailed account of alleged torture and extrajudicial executions in the state of Manipur. He felt that India should have an opportunity to respond to such serious allegations, perhaps in writing, to the Committee.

75. Mr. RAMASWAMY (India) observed that Mr. Sadi had raised a very sensitive issue, because the Indian Government, convinced that Amnesty International reports were one-sided and not impartial, did not recognize it as an official body with authority to supervise its activities. It would be recalled, incidentally, that he himself had acknowledged earlier that thousands had been killed by terrorists in the disturbed areas of the country and that the Government was trying to prevent such violence. However, if Mr. Sadi personally brought up any allegations, he would personally order a Government investigation into the matter and would inform Mr. Sadi of the outcome. In ratifying the Covenant, India had committed itself to making all rights available to all its citizens; and it had taken action on individual violations without, of course, having achieved Utopian conditions. India's judiciary was one of the best in the world, and its outstanding public interest litigation had in general uncovered all human rights violations, no matter where in India they occurred. The country as a whole was very sensitive to human rights and none were better sentinels of human rights than the Indian people themselves.

76. Mr. EL-SHAFEI, referring to article 9 of the Covenant, asked what protection there was against arbitrary detention and the violation of other protected rights, in view of the overly broad language of the Terrorist and Disruptive Activities (Prevention) Act, article 4 (2) of which defined disruptive activity as any action which questioned, disrupted or was intended to disrupt, either directly or indirectly, the sovereignty and territorial integrity of India. Also, what procedures were available to detainees for complaints against abuses while in detention? Had any such cases been brought, and what had been the outcome?

77. Regarding the declaration of areas as disturbed under the Armed Forces (Special Powers) Act, he noted that some declarations, such as those affecting the states of Assam and Manipur, had no time-limit, although it was difficult to conceive that areas could remain indefinitely disturbed. He would like to know if

(Mr. El-Shafei)

there was any statutory obligation to review such declarations, and if the central Government sought the approval of the state Government concerned in declaring it to be a disturbed area.

78. Mr. RAMASWAMY (India) observed that it was a general principle of administrative constitutional law that all statutory powers had to be exercised reasonably for a reasonable time, in good faith, and for the purposes for which the powers were intended. The declaration of areas as disturbed, being the exercise of a statutory power, was subject to judicial review if challenged at the time of the declaration.

79. The Armed Forces (Special Powers) Act itself contained safeguards. An area could be declared disturbed only so long as it continued to be disturbed, and the indefinite continuation of a declaration of an area as disturbed was also subject to judicial review. There was no statutory obligation to review such declarations, but rather a constitutional, administrative obligation. The purpose of such a power being the protection of the people against insurgents, the Government did not hesitate to repeal a declaration once it was satisfied that the situation in an area had returned to normal, and the Committee need therefore have no apprehension regarding the time-limit.

80. Originally, only the state Governments had the power to declare an area to be disturbed, but the Parliament had passed legislation (which had been challenged in the courts) giving the central Government concurrent, independent power to do so, so that the approval of the state in question was not needed. In practice, prior consultation did occur, as in the case of the state of Assam.

81. Regarding the provisions against arbitrary detention and the procedure for hearing the complaints of detainees, none were available under the Terrorist and Disruptive Activities (Prevention) Act which provided only for special trials, bail procedures and designated courts. Arrests were governed by the normal provisions of the Code of Criminal Procedure.

The meeting rose at 1 p.m.